In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1364

CENTRAL ARKANSAS AUCTION SALE, INC.; MAJOR LEWIS, D/B/A MAJOR LEWIS LIVESTOCK AUCTION SALES; BILL RICE AND LOIS RICE, D/B/A CLEBURNE COUNTY LIVESTOCK AUCTION SALE; AND TRAVIS McGEE, D/B/A ATKINS LIVESTOCK AUCTION,

Petitioners,

vs.

THE U. S. DEPARTMENT OF AGRICULTURE AND THE PACKERS AND STOCKYARDS—AMS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Reference Note:

As of January 1, 1978, pursuant to an internal reorganization of the U. S. Department of Agriculture, the Packers and Stockyards Administration became a subdivision of the Agricultural Marketing Service branch of the Department of Agriculture. Hence, Petitioners refer to the Packers and Stockyards—AMS, instead of the Packers and Stockyards Administration.

Petitioners will additionally refer to the Packers and Stockyards—AMS as "Agency."

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit, pertaining to this cause, is not reported as of this writing. It is submitted, in slip opinion form, in Appendix "A".

The opinion of the Judicial Officer of the U. S. Department of Agriculture, pertaining to this cause, is reported at 36 A.D. 764 (1977). It is submitted in Appendix "B".

The opinion of the Administrative Law Judge of the U. S. Department of Agriculture, pertaining to this cause, was not reported. It is submitted, too, in Appendix "C".

JURISDICTION

Dates of Decision and Judgment:

The decision and judgment of the U. S. Court of Appeals for the Eighth Circuit was issued February 10, 1978.

The Petitioner did not seek a rehearing of its cause in the Court of Appeals.

Statutory Basis:

This cause originated as an administrative law proceeding initiated by an agency of the United States Government. It reached the Eighth Circuit for the U. S. Court of Appeals by virtue of the jurisdiction conferred in 28 U.S.C. 2342 (2). The Supreme Court has jurisdiction to review a decision of the U. S. Court of Appeals by granting Writ of Certiorari, 28 U.S.C. 1254 (1), 2350; and Rule 19 (1), Revised Rules of the Supreme Court of the United States of America.

Statement:

In addition, Petitioner points out that essentially the same question raised in this Petition is being brought to this Court's attention in a Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit in a cause styled:

GILES LOWERY STOCKYARDS, INC. D/B/A
LUFKIN LIVESTOCK EXCHANGE,
Petitioners,

vs.

THE U. S. DEPARTMENT OF AGRICULTURE
AND
THE PACKERS AND STOCKYARDS—AMS,
Respondents,

from a decision issued December 27, 1977, *Giles Lowery Stockyards, Inc.* v. *Department of Agriculture*, 565 F.2d 321 (C.A.—5th 1977).

QUESTIONS PRESENTED

1. CAN THE AGENCY SEEK IN 1976 TO "STAMP WITH APPROVAL", THROUGH AD HOC LITIGATION, A METHODOLOGY, ITS RATE ANALYSIS, WHICH IT HAD FORMULATED, ADOPTED, AND APPLIED SINCE AT LEAST 1970, BUT WHICH IT HAD NEVER ANNOUNCED TO THOSE TO WHOM IT APPLIED ITS RATE ANALYSIS?
2. IS THE DECISION AND ORDER OF THE JUDICIAL OFFICER DEFECTIVE FOR ITS LACK OF REFERENCE TO ASCERTAINABLE STANDARDS?

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are:

The Packers and Stockyards Act, 1921, 7 U.S.C. 181 *et seq.* and related regulations found at 9 CFR Chapter 2, and more specifically

7 U.S.C. 201

7 U.S.C. 202

7 U.S.C. 206

7 U.S.C. 207

9 CFR 203.8

The Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, and more specifically

5 U.S.C. 552 (before amended on November 21, 1974, with an effective date ninety days thereafter)

5 U.S.C. 553

The specific statutes are identified and submitted as Appendix "D".

STATEMENT OF THE CASE

This case arises under 7 U.S.C. 181, *et seq.*, Packers and Stockyards Act of 1921, hereinafter referred to as the Act. Petitioners were at all times material to this cause engaged in conducting livestock marketing businesses as registrants under the Act, which involved being registered with the Secretary of Agriculture as a market agency, 7 U.S.C. 201, 202, Appendix "D" pages A237-A238.

The present appeal began with the filing of a complaint, order of suspension and notice of hearing (hereinafter referred to as complaint), on January 30, 1976, for each respective petitioner. The complaints: Central Arkansas Auction Sale, Inc., P&S Docket No. 524; Major Lewis, d/b/a Major Lewis Livestock Auction Sales, P&S Docket No. 5250; Bill Rice and Lois Rice, d/b/a Cleburne County Livestock Auction Sale, P&S Docket No. 5251; Travis McGee, d/b/a Atkins Livestock Auction, P&S Docket No. 5252; were filed by the Administrator, Packers and Stockyards Administration (now Packers and Stockyards—AMS) (hereinafter referred to as the Agency), United States Department of Agriculture (hereinafter referred to as the Department), as agent and designate of the Secretary of Agriculture. The basis for the complaints is found in Section 207 (e) of the Act, Appendix "D" pages A239-A240.

The complaints were issued by the Agency because: On January 14, 15, and 16, 1976, appellants filed with the Agency new tariffs, which were to go into effect on February 1, 1976, and which would have assessed greater rates and charges for stockyard services than their respective tariffs then on file and in effect. The Agency concluded that a further rate increase would be unreasonable and the aforementioned complaints were issued.

The Agency suspended the utilization of the respective tariffs sought by appellant for thirty days and then again for a second thirty days, per Section 207 of the Act, for a total suspension of sixty (60) days. Thereafter, the respective tariffs of each Petitioner became effective.

An oral hearing was conducted before Administrative Law Judge Victor W. Palmer in April of 1976. Mr. George F. Hartje, Jr., Esquire, Conway, Arkansas, represented the appellants (the hearing was a consolidation of the respec-

tive complaint for each appellant), and Mr. Eric Paul, Esquire, Office of the General Counsel, United States Department of Agriculture, Washington, D. C., represented the Agency. The purpose of the hearing was to determine whether the schedule of rates and charges as set forth in appellants' respective tariffs was "just, reasonable, and nondiscriminatory" per Section 206 of the Act, Appendix "D" page A238.

Judge Palmer filed an Initial Decision and Order on November 16, 1976, proposing rates higher than recommended by the Agency but different from those set forth in the challenged tariffs.

Both sides took an appeal to the Judicial Officer. Final administrative authority to decide rate cases under the Packers and Stockyards Act has been delegated to the Judicial Officer, 7 U.S.C. 450c-450g.

The Decision and Order of the Judicial Officer was filed May 6, 1977.

The sequence of events can be summarized as:

1. Each respective Petitioner sought a tariff increase; e.g. Agency acceptance of a new tariff: Central Arkansas Auction Sale, Inc., sought a Tariff No. 2; Major Lewis, d/b/a Major Lewis Livestock Auction Sales sought a Tariff No. 3; Bill Rice and Lois Rice, d/b/a Cleburne County Livestock Auction Sale sought a Tariff No. 3; Travis McGee, d/b/a Atkins Livestock Auction sought a Tariff No. 2.

2. The Agency applied its rate analysis to the data on each Petitioner's most recent annual report, Appendix "B" page A14.

3. The Agency issued its complaint against each Petitioner.

4. The Agency calculated a reasonable revenue requirement for each Petitioner's business for a base period by an application of its rate analysis to each Petitioner's annual report.

5. The proposed tariff of each Petitioner is declared "unjust and unreasonable".

6. The Agency prescribed a tariff for each Petitioner's business, Appendix "B" pages A129-A137.[1]

Reference Note:

A tariff is a schedule of rates and charges which a marketing business subject to the Packers and Stockyards Act, 1921, can assess a consignor who sells his livestock through the marketing business.

A percentage tariff, or a value-based tariff, is one in which the charges to the consignor are based on the amount or value for which the consignor's livestock was sold.

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1. 7 U.S.C. 211 states: Whenever after full hearing upon a complaint made as provided in Section 309, or after full hearing under an order for investigation and hearing made by the Secretary of his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter in such case observed as both the maximum and minimum to be charged, and what regulation or practice is or will be just, reasonable and nondiscriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services more or less than the rate or charge so prescribed; and (3) shall conform to and observe the regulation or practice so prescribed.

A per-head tariff is one in which the charges to the consignor are based on a flat-charge per head of livestock sold. Appendix "B" pages A129, A137 are examples.

The Agency's rate analysis or rate methodology can be found briefly outlined in Appendix "B" pages A21-A28.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

Certiorari should be granted for a thorough consideration of the questions presented for three significant reasons:

1. The questions were not adequately considered in the forums below.

2. The consideration given these questions below was not in accord with existing precedents and statutory requirements.

3. The questions presented deal with important aspects of administrative law.

Introduction

Further perspective with regard to the questions presented is gained from:

1. The first question could be framed as: WHETHER THE AGENCY WAS REQUIRED, THROUGH PROPER NOTIFICATION AND PUBLICATION PROCEDURES, TO AFFORD THE PETITIONER THE OPPORTUNITY TO CONFORM TO AND OPERATE ITS BUSINESS IN LIGHT OF THE METHODOLOGY AND STANDARDS BY WHICH THE AGENCY VIEWED AND APPRAISED PETITIONER'S BUSINESS OPERATIONS FOR RATE REGULATION PURPOSES?

2. The Decision and Order begins, Appendix "B" page A14:

> "On January 13, 14, and 15, 1976, the four respondents filed with complainant proposed increases in their rates and charges which were to go into effect on February 1, 1976. The proposed schedules of rates and charges would have increased the percentage charges then in effect from 3% of the first $2,000 of gross sales proceeds obtained for a consignor plus 2% on any sum above $2,000 (except the Rices charged a straight 3%), to 4% of the first $2,000 plus 3% on any sum above $2,000.
>
> "Respondents furnished no information in support of the increases when they filed the proposed schedules. Thereafter, complainant concluded on the basis of the proposed tariffs and respondents' annual reports[2] that the proposed rates would be unjust, unreasonable and/or discriminatory . . ."

The Agency had no regulations or published guidelines relating to data or information which a registrant, such as Petitioner, is required to submit in conjunction with a request for a tariff increase.

3. The Agency's rate analysis or rate methodology had not been published or announced to those whom the

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2. (footnote not in Decision and Order) 9 CFR 201.97 states: "Every packer, stockyard owner, market agency, dealer (except a packer buyer registered to purchase livestock for slaughter only), and licensee shall file annually with the Administration a report on prescribed forms not later than April 15 following the calendar year end or, if the records are kept on a fiscal year basis, not later than 90 days after the close of his fiscal year. The Administration on good cause shown, or on his own motion, may grant a reasonable extension of the filing date or may waive the filing of such reports in particular cases (33 F.R. 14400, Sept. 25, 1968)."

Agency regulated prior to the filing of the complaint against the Petitioner on January 30, 1976.

4. The Agency's rate analysis or rate methodology had not been published or announced to those whom the Agency regulated prior to the oral hearing for this cause in April, 1976.

5. The Agency did provide counsel for Petitioner at the oral hearing notice of its methodology for analyzing auction rates prior to the oral hearing, Appendix "A" page A4, by providing counsel with a copy of the Judicial Officer's Decision and Order in the *Giles Lowery* case, *supra.*

6. The Agency's long-standing, but unpublished and unannounced policy was to apply its rate analysis to the data of a registrant's latest annual report; see Appendix "B" pages A14, A37, A45, A54, A60.

7. The Agency has published policy statements, which recognize:

(a) that Petitioner is not a public utility,

(b) that Petitioner is not a monopoly (9 CFR 203.8 (h), Appendix "D" page A244),

(c) that Petitioner is in competition with other businesses in the livestock marketing industry (9 CFR 203.8 (d), Appendix "D" page A242),

(d) that the Agency does not favor one marketing system over another (9 CFR 203.8 (k), Appendix "D" pages A246-A247).

I

The Agency has contended throughout that:

> ". . . the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency . . .", *Securities and Exchange Commission* v. *Chenery Corp.*, 332 U.S. 194, 203, 67 S.Ct. 1575, 1580, 91 L.Ed. 1995 (1947).

See Appendix "A" page A3. And, the thrust of the examination of the "Notice Issue" by the Court of Appeals was directed toward whether counsel for the Petitioner in the oral hearing below was given sufficient notice of the Agency's rate analysis to prepare a case, Appendix "A" pages A3-A5, see *Hill* v. *Federal Power Commission*, 335 F.2d 355 (C.A.—5th 1964), *Port Terminal Railroad Association* v. *United States*, 551 F.2d 1336 (C.A.—5th 1977).

II

Both the Agency and the Court of Appeals have misplaced the import of Question 1 in the order of things. Question 1 is a threshold issue which precedes the question of notice to Petitioner's counsel prior to the administrative oral hearing.

The Agency's rate analysis or ratemaking formula or the methodology which it utilizes for its rate regulation function was formulated and adopted and applied, in whole and in part, several years before the Agency issued its complaint initiating this cause.

There is nothing in the Decision and Order, Appendix "B", which points to, or hints that, the Agency's rate analysis was a "proposition" or a "proposal". Nor, has it ever been asserted that the Agency's rate analysis, or any

aspect of it, was a product of the adjudicatory process of the administrative oral hearing for this cause.

A fair reading of *SEC* v. *Chenery Corp., supra,* to place the referenced material in context, will show the unavailability of that leading decision for an affirmative answer to Question 1. That decision speaks of "problems which arise in a case which the administrative agency could not reasonably foresee . . .", "Or the Agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized in nature as to be impossible of capture within the boundaries of a general rule.", at 332 U.S. 194, 202, 203, 67 S.Ct. 1575, 1580. The language of that decision in context with the situation which that agency faced simply does not mean that this Agency can utilize "ad hoc litigation" to "stamp approval" on substantive policy which it had been applying to those whom it regulated, but which it had never formally announced.

III

Additional support for Petitioner's contentions with respect to Question 1 follows:

1. The Decision and Order of the Judicial Officer quite clearly shows that the Agency's methodology was formulated and adopted and applied by the Agency as far back as at least 1970:

(a) Bad Debt Allowance—Appendix "B" pages A108-A110:

> "For many years, the Complainant removed all bad debt expenses and made no allowance for bad debt losses. *However, in 1968 or 1969,* the complainant began making an allowance based on the stockyard

> industry's average bad debt experience (Tr. 169)." (Emphasis added)

(b) Allowance for Use of Land—Appendix "B" page A119:

> "We recommended to the administrator, the Packers and Stockyards Administration, that we adopt a method of allowing a use for land of six cents per unit. *We adopted that in approximately (in) 1969,* as I recall, and since that date all land values of stockyards is based on six cents per unit." (Emphasis added)

(c) Rate of Return on Buildings and Equipment—Appendix "B" pages A114-A118: See Errata.

> "This is the only allowance under complainant's auction market rate analysis which is based on a rate return times value. *Prior to about 1969,* the allowance for land was computed by multiplying the rate of return times the value of the land, but the allowance for land is now computed on the basis of the number of animal units handled at the market, which, in this case, resulted in an allowance more than three times larger than would have been determined under the *pre-1969 formula.*" (Emphasis added)

(d) Animal Units and the Formula for Determining Owner's Compensation—Appendix "B" pages A101-A102.

> "The concept of animal unit was devised because the costs associated with the sale of different species varies according to the species; but revenue analysis requires consistent treatment of all livestock sold at a market. The conversion formula *adopted by complainant* was supported by a statistical analysis by Mr. Everett Stoddard, an Agricultural Economist for complainant."

(Tr. 274-275; see also, Comp. EX. IX, pp. 9-11, attached to stipulation 3, filed August 9, 1974) (Emphasis added)

"The complainant's present formula for computing a working owner's allowance *was adopted in 1970*, and is reviewed yearly. Mr. Jack W. Brinckmeyer, Chief of complainant's Rate Branch, testified that the formula still provides more than adequate compensation for a market's working owner." (Tr. 207-209) (Emphasis added)

See the Decision and Order Appendix "B" pages A26-A28 for the significance of the animal unit concept as it enters into a number of calculated "allowances" in the Agency's rate analysis.

It has to be clear and inescapable from this immediate discussion that the Agency's "rate analysis" was internally a fully formulated and adopted and utilized methodology from at least 1970 onward. But, it was never published or announced to those against whom it was applied, including the Petitioner.

2. The Agency utilized this methodology in initiating the following rate hearings, based on the language of 7 U.S.C. 207 (e), Appendix "D" pages A239, A240, which are a matter of public record:

(a) March 29, 1974, P&S Docket No. 4933, In re Corona Livestock Auction, Inc.;

(b) July 8, 1975, P&S Docket No. 5151, In re C. E. Mills and E. E. Mills, d/b/a Mills Auction Market;

(c) July 18, 1975, P&S Docket No. 5157, In re Robertsdale Livestock Auction, Inc.

(d) August 8, 1975, P&S Docket No. 5164, In re Granite City Livestock Sales.

Each of these rate hearings was initiated by the Agency prior to the initial decision of the administrative law judge from the oral hearing of the *Giles Lowery* case, *supra*, e.g. prior to the "ratemaking formula achieving the status of a 'substantive rule of general applicability' or a 'statement of general policy' " if we are to believe the Fifth Circuit.

Can there be any doubt that the Agency is applying a methodology already formulated and adopted internally?

3. In addition to the erroneous consideration of the rate analysis vis-a-vis 5 U.S.C. 552, the Court of Appeals failed to address the Agency's rate analysis or rate methodology in terms of its substantial impact and general applicability, not only to the Petitioner, but to others in the industry similarly situated, and the provisions of 5 U.S.C. 553, Appendix "D" pages A248-A250, *National Motor Freight Traffic Ass'n* v. *United States*, 268 F.Supp. 90 (D.C. D.C. 1967), affirmed 393 U.S. 18, 89 S.Ct. 49, 21 L.Ed.2d 19 (1968), *Pharmaceutical Manufacturers Ass'n* v. *Finch*, 307 F.Supp. 858 (D.C. D.Dela. 1970). Certainly, there can be no doubt that the regulation of revenues which a business can receive has a substantial impact on its private rights and obligations. Elementary fairness should require that reasonable opportunity be given for submission of views by those materially affected, *Brokers-Dealers Trade Ass'n* v. *SEC*, 442 F.2d 132, 144 (C.A.—D.C. 1971), cert. den. 404 U.S. 828, 92 S.Ct. 63, 30 L.Ed.2d 57 (1971).

4. Additional support for a thorough consideration of Petitioner's first question is found by noticing:

(a) That in 1958 Congress amended the Packers and Stockyards Act to include Petitioner, among some 2,000 other businesses such as Petitioner's, as subject to the Act, Appendix "B" pages A80-A84.

(b) That the Agency, in the oral hearing below, was seeking a declaration that all value based tariffs were illegal, Appendix "B" pages A127-A128, e.g. contra to the language "just, reasonable, and nondiscriminatory" of 7 U.S.C. 206, Appendix "D" page A238. This aspect becomes highlighted when the Agency again turned to "ad hoc litigation" with respect to the rate hearing for these Petitioners, all of whom had percentage (value-based) tariffs. The Agency also pursued a value-based tariff in the *Giles Lowery* case, *supra,* and this aspect was noted in the Petition For Writ Of Certiorari To The Fifth Circuit now before this Court and referenced *supra.*

(c) That at the time of the oral hearing below, some 1,200 businesses, such as Petitioner's, as registrants under and subject to the Packers and Stockyards Act, 1921, utilized some form of a value-based tariff and such tariffs had been utilized within the industry without challenge from the Agency for some 15 years.

Hence, there is a close and direct analogy to *N.L.R.B.* v. *Majestic Weaving Co.,* 355 F.2d 854 (C.A.—2nd 1966).

IV

Petitioner points to a lack of ascertainable standards as a fatal defect in the Decision and Order of the Judicial Officer, *Question 2.* A brief analysis will show the defects.

First, the Agency must find a way to declare the respective tariffs of each Petitioner "unjust and unreasonable", 7 U.S.C. 211, footnote 1, *supra.* Then, secondly, the Agency can prescribe its own tariff.

The manner of getting to an "unjust and unreasonable" tariff is to first apply the rate analysis to calculate a reasonable revenue requirement for a base period.

The revenues of the marketing business are compared to the reasonable revenue requirement. If the revenues do, or are projected to, exceed the reasonable revenue requirement, the tariff generating such revenues is deemed "unjust and unreasonable", and the Agency goes on to prescribe a tariff. This happened in the *Giles Lowery* case, and in the instances of three of these Petitioners,—Central Arkansas Auction Sale, Inc.; Major Lewis, d/b/a Major Lewis Livestock Auction Sales; and Travis McGee, d/b/a Atkins Livestock Auction, Appendix "B" pages A43, A44; A52, A53; A58, A59. Yet in each such instance here, as well as the *Giles Lowery* case, *supra,* the Agency can turn around and prescribe a tariff which also goes over the reasonable revenue requirement. Of what merit is the rate analysis if it can be exceeded? Where is the standard that tells us the relative importance of the rate analysis vis-a-vis the possible methods by which a business could receive revenues in excess of the reasonable revenue requirement and still be deemed to have a tariff which was "just and reasonable"? There are no such standards. This is emphasized in the instance of Petitioners Bill and Lois Rice, d/b/a Cleburne County Livestock Auction Sale, which had projected revenues less than the reasonable revenue requirement, Appendix "B" pages A67, A68. Here, the Agency had "painted itself into a corner". So, the Agency shifted gears to place emphasis on the method of reaching the reasonable revenue requirement. But, again, with no reference to standards.

The shadow over all of this cause, and argument, is that none of the Petitioners ever had a chance to operate his business with a knowledge of the Agency's rate analysis.

The Agency has the requirement to formulate and apply its rate analysis and then to be the judge of how the application of its rate analysis is to be interpreted, which it has done without prior notice of any ascertainable standards to those affected. Petitioners do not believe that such Agency action can stand in harmony with the provision of the Administrative Procedure Act, as well as our elementary concepts of due process and fairness. Without notice of either the substantive policy or its interpretation, the Petitioners have been subject to "secret law".

Two sharp discrepancies are: In this cause the Agency applied its rate analysis essentially to just the Petitioners' annual reports for a base period. In the *Giles Lowery* case, *supra,* the Agency applied its rate analysis to audited data of that business. But why the difference? The point with respect to revenues less than the reasonable revenue requirement has just been made.

CONCLUSION

From the above discussion it is quite evident that the questions presented did not receive adequate consideration in the forums below. And, the questions presented deal with important aspects of administrative law with serious implications to those subject to this Agency's regulation, as well as agency regulation in general. While it may at this time be academic, we cannot address this cause in a straightforward manner without posing at least to himself, the thought: "Just maybe, if each Petitioner had been permitted to conduct his business in light of the Agency's views on rate regulation, the complaints and oral hearing below would not have been necessary."

Respectfully submitted,

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VERSUS

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RESPONDENTS.

ERRATA TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Upon re-reading Petitioners' brief after it had been filed, the following error was found:

The quoted material found at III-1-(c) of Petitioners' brief, p. 13, and referenced to Appendix "B" pages A114-A118 is not specifically found at those pages. The quoted material is from the Judicial Officer's Giles Lowery decision Appendix "B" in No. 77-1366 now before this Court on petition for a writ of certiorari to the U.S. Court of Appeals - Fifth Circuit and presented as a companion case to this cause. The quoted material is not reproduced verbatim in the Judicial Officer's Central Arkansas decision, Appendix "B" here, but rather finds its way to this Appendix "B" by way of the Judicial Officer's references

to his prior Giles Lowery decision. Counsel for Petitioners would not mean to mislead the Court, and hence, brings this to its attention.

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